

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SHELDON JOHN OLIVER,

Plaintiff,

v.

PHELPS COUNTY JAIL,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

No. 4:16-CV-847 AGF

MEMORANDUM AND ORDER

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed Plaintiff's financial information, the Court assesses a partial initial filing fee of \$6.00, which is twenty percent of his average monthly deposit. *See* 28 U.S.C. § 1915(b). Additionally, this case is dismissed.

Standard of Review

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief, a complaint must plead more than "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a "mere possibility of misconduct." *Id.* at 679. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. Determining whether a

complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

When reviewing a complaint under 28 U.S.C. § 1915(e), the Court accepts the well-pled facts as true. Furthermore, the Court liberally construes the allegations.

The Complaint

Plaintiff complains that he slipped on metal steps when he was exiting the shower. He says he injured his right ankle and hand as a result. He also claims he was bitten by a spider when he was sleeping on the floor.

Discussion

Plaintiff's claims are legally frivolous because the Phelps County Jail cannot be sued. *Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (8th Cir. 1992) (departments or subdivisions of local government are "not juridical entities suable as such.").

Moreover, Plaintiff has not alleged that a state actor caused his injuries. So, the complaint is frivolous for this reason as well. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) ("Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.")

Finally, claims under § 1983 are limited to deprivations of rights, privileges, or immunities under the United States Constitution or federal law. 42 U.S.C. § 1983. Plaintiff's allegations may rise to the level of negligence on the part of a government official. However, "something more than mere negligence" is required to state a claim

for relief under the Constitution or federal law. *See Farmer v. Brennan*, 511 U.S. 825, 835 (1994). Furthermore, the Court cannot envision any amendment to the complaint that would cure it of its defects. As a result, the complaint is dismissed.

Accordingly,

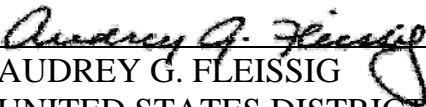
IT IS HEREBY ORDERED that Plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that the Plaintiff must pay an initial filing fee of \$6.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.¹

IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed forthwith.

Dated this 29th day of November, 2016.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

¹ Prisoners must pay the full amount of the \$350 filing fee. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner will deduct the payments and forward them to the Court each time the amount in the account exceeds \$10. 28 U.S.C. § 1915(b)(2).